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ROCA**  
LLP  
L A W Y E R S

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Attorneys for Official Committee of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

**In re:**

**USA Commercial Mortgage Company  
06-10725 – Lead Case**

**USA Capital Realty Advisors, LLC  
06-10726**

**USA Capital Diversified Trust Deed Fund,  
LLC  
06-10727**

**USA Capital First Trust Deed Fund, LLC  
06-10728**

**USA Securities, LLC  
06-10729**

**Debtors.**

Jointly Administered

Chapter 11 Cases

Judge Linda B. Rieggle Presiding

**EX PARTE APPLICATION FOR  
ORDER SHORTENING TIME  
PURSUANT TO FED. R. BANKR. P.  
2014(a) FOR ORDER UNDER  
SECTION 1103 OF THE  
BANKRUPTCY CODE  
AUTHORIZING THE  
EMPLOYMENT AND RETENTION  
OF DIAMOND McCARTHY TAYLOR  
FINLEY & LEE, LLP AS SPECIAL  
LITIGATION COUSEL TO THE  
OFFICIAL UNSECURED  
CREDITORS' COMMITTEE FOR  
USA COMMERCIAL MORTGAGE  
COMPANY**

Date: January 31, 2007 requested

Time: 9:30 a.m. requested

**Affecting:**

.. All Cases

**or Only:**

× USA Commercial Mortgage Company

.. USA Capital Realty Advisors, LLC

.. USA Capital Diversified Trust Deed Fund,  
LLC

.. USA Capital First Trust Deed Fund, LLC

.. USA Securities, LLC

**TO THE HONORABLE LINDA B. RIEGGLER, U.S. BANKRUPTCY JUDGE:**



1 The Unsecured Creditors' Committee for USA Commercial Mortgage Company  
 2 (the "Committee"), by and through its attorneys, Lewis and Roca LLP, has filed their  
 3 Application pursuant To Fed. R. Bankr. P. 2014(A) For Order Under § 1103 of the  
 4 Bankruptcy Code Authorizing the Employment and Retention of Diamond McCarthy  
 5 Taylor Finley & Lee, LLP ("Diamond") As Special Litigation Counsel To The Official  
 6 Unsecured Creditors' Committee For USA Commercial Mortgage Company (the  
 7 "Diamond Application"). This ex parte application is made and based upon Fed. R.  
 8 Bankr. P. 9006, the following memorandum of points and authorities and Declaration of  
 9 Rob Charles (the "Charles Declaration"), the Attorney Information Sheet filed  
 10 contemporaneously herewith, and the papers and pleadings on file herein, judicial notice  
 11 of which is respectfully requested.

12 Accordingly, the Committee respectfully requests that this Honorable Court grant  
 13 this ex parte application and issue an order shortening time to hear the Diamond  
 14 Application at the Omnibus Hearing on January 31, 2007 (the "Omnibus Hearing"), and  
 15 for such other and further relief as the Court deems just and proper.

### 16 17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 Pursuant to the Amended Order Establishing Case Management Procedures [DE  
 19 274], all motions, pleadings, applications, other requests for relief, objections, responses  
 20 and replies thereto, and all other matters shall not be considered by the Court unless it is  
 21 filed and serve at least twenty-five days prior to the next Omnibus Hearing Date.  
 22 Therefore, the Committee requests the period of notice be shortened and the hearing  
 23 expedited. Section 105, Title 11 U.S. Code (the "Bankruptcy Code") allows this Court to  
 24 issue such orders as are necessary to carry out the provisions of this title. Fed. R. Bankr.  
 25 P. 9006(c)(I) generally permits a Bankruptcy Court, for cause shown and in its discretion,  
 26



1 to reduce the period during which any notice is given in accordance with the Bankruptcy  
2 Rules. Bankruptcy Rule 9006(c)(I) provides as follows:

3 Except as provided in paragraph (2) of this subdivision, when  
4 an act is required or allowed to be done at or within a specified  
5 time by these rules or by a notice given thereunder or by order  
6 of court, the court for cause shown may in its discretion with  
7 or without motion or notice order the period reduced.

8 11 U.S.C. § 105. Local Rule 9006 provides further authority for shortening the time for a  
9 hearing. According to Local Rule 9006(b), every motion for an order shortening time  
10 must be accompanied by an affidavit stating the reasons for an expedited hearing. As set  
11 forth in the Diamond Declaration, there is a compelling reason for an expedited hearing.

12 Local Rule 9006 requires the moving party to submit an Attorney Information  
13 Sheet indicating whether opposing counsel was provided with notice, whether opposing  
14 counsel consented to the hearing on an order shortening time, the date counsel was provide  
15 with notice and how notice was provided or attempted to be provided. An attorney  
16 Information Sheet was filed contemporaneously with this ex parte motion.

### 17 **DECLARATION OF ROB CHARLES**

18 I, Rob Charles, declare under penalty of perjury:

19 1. I am over the age of 18, am mentally competent, have personal knowledge of  
20 the facts in this matter, and if called upon to testify in this matter, could and would do so.

21 2. I am a partner with Lewis and Roca LLP, attorneys for the Committee  
22 described below. This declaration is submitted in support of the Ex Parte Application by  
23 the Unsecured Creditors' Committee for USA Commercial Mortgage Company to shorten  
24 time for hearing the Diamond Application.

25 3. On April 13, 2005 (the "Petition Date"), USA Commercial Mortgage  
26 Company ("USACM"), USA Securities, LLC ("USA Securities"), USA Capital Realty  
Advisors, LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC



1 (“DTDF”), and USA Capital First Trust Deed Fund, LLC (“FTDF” and, collectively with  
2 USACM, USA Securities, USA Realty, and DTDF, the “Debtors”) filed voluntary  
3 petitions for relief under Chapter 11, Title 11 of the United States Code.

4 4. The Office of the U.S. Trustee filed a Notice of Appointment of Official  
5 Committee of Unsecured Creditors for USA Commercial Mortgage Company on May 16,  
6 2006, and amended the Committee’s composition thereafter.

7 5. On January 8, 2007 the Court entered its Order Confirming the “Debtors’  
8 Third Amended Joint Chapter 11 Plan of Reorganization” (the “Confirmation Order”) was  
9 entered.

10 6. In addition, the Confirmation Order approved the Liquidating Trustee  
11 agreement for the USACM Liquidating Trust and the nomination of Geoffrey L. Berman  
12 as Trustee (the “Trustee”) of the USACM Liquidating Trust as successor to USACM upon  
13 the Effective Date of the Plan.

14 7. The Trustee, subject to the Plan becoming effective, interviewed potential  
15 special litigation counsel to investigate and pursue litigation against the insiders and  
16 affiliates of Debtors, including without limitation former officers and directors Thomas  
17 Hantges, Joseph Milanowski and their affiliate USA Investment Partners, LLC. Members  
18 of the USACM Liquidating Trust Committee, including representatives of the Official  
19 Committee of Equity Security Holders of DTDF participated in the interview process.

20 8. After the interview, the Trustee selected Diamond as special litigation  
21 counsel to the Trust on January 12, 2007, subject to the Plan becoming effective.

22 9. The Committee believes it is imperative that special litigation counsel be  
23 employed by the Committee as of January 12, 2007, on an interim basis, to investigate the  
24 causes of action against various third parties and preservation of documents and  
25 information. Delaying that employment, and the work of counsel, until the uncertain  
26 Effective Date of the Plan may delay the investigation of causes of action and preservation

1 of documents and information that are important sources of recovery for unsecured  
2 creditors of USACM under the Plan.

3 10. Diamond has agreed that it shall be compensated solely by the Trust. In  
4 other words, while Diamond will be employed by the Committee under the Effective Date  
5 of the Plan, and then by the Trust, Diamond will look solely to the Trust for compensation.  
6 Since no compensation is due from the estate or the Committee, we have not included  
7 information about Diamond's rates or charges. In fact, the Trustee believes that the targets  
8 of Diamond's investigation have no need to know the terms of the Trust's retention  
9 agreement with Diamond.

10 11. An omnibus hearing has been scheduled for January 31, 2007, at which time  
11 certain motions and applications are scheduled to be heard, including:

- 12 • DTDF's Objection to Claim Nos. 79, 80, & 81 filed by the Pension Benefit  
13 Guaranty Corp [DE 2251, 2252]
- 14 • FTDF's Objection to Claim Nos. 83, 84, & 85 filed by the Pension Benefit  
15 Guaranty Corp. [DE 2254, 2255]
- 16 • Application for Compensation for Expenses and Services Rendered by Matthew  
17 Q. Callister on behalf of Project Disbursement Group, Inc. [DE 2271, 2316,  
18 2317]
- 19 • Official Committee of Equity Security Holders of FTDF's Omnibus Objection  
20 to Claim Misfiled against USACFTDF [DE 2285, 2286, 2288, 2289, 2290,  
21 2294, 2296, 2298]
- 22 • Official Committee of Equity Security Holders of FTDF's Objection to Claim  
23 #120 of Standard Property Development, LLC [DE 2293, 2299]
- 24 • Official Committee of Equity Security Holders of FTDF's Omnibus Objection  
25 to: Claim #115 of Brian M. Adams; Claim #118 of Herman Adams, et al.;  
26 Claim #119 of Olympia Capital Management; Claim #123 of Kantor  
Nephrology Consultants, Ltd 401(k) PSP; Claim #124 of Dr. Gary Kantor;  
Claim #125 of Lynn M. Kantor; Claim #125 by Andrew M. Parlen [DE 2295,  
2300]
- Motion to Enforce Order Granting Debtors' Motion to Distribute Funds filed by  
Jeffrey R. Sylvester on behalf of Joseph Milanowski, USA Commercial Real  
Estate Group [DE 1388, 1389, 1781, 2350]

- Omnibus Objections of the Official Committee of Equity Security Holders of USA Capital DTDF to Claims on Equity Misfiled as Creditor Claims (relates to DTDF only) [DE 1891, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 2353]
- Adv. 06-1179 USACMC v. Standard Property Development LLC – Motion to Dismiss, Motion to Abstain and Motion to Dissolve Preliminary Injunction [DE 59, 62]
- Extension of Employment Application of: Mesirow Financial Interim Management; Designation of Thomas Allison of Mesirow; Schwartzer & McPherson; and Ray Quinney [DE 2402]

12. As this Court is well aware, the Chapter 11 Cases are moving forward at an extraordinary pace, and therefore it is critical that Diamond be employed as the Committee's special litigation counsel. As such, it is necessary that the Application be heard at the January 31, 2007 hearing. Notably, counsel for the above-captioned Debtors, and counsel for the Committees have agreed to have the Court consider the Application on shortened time (we await a response from the Office of the United States Trustee as of this writing).

I make this declaration under penalty of perjury of the laws of the United States of America.

DATED: January 18, 2007.

**LEWIS AND ROCA LLP**

/s/ RC (#006593)

Rob Charles



**CONCLUSION**

The Committee respectfully requests that this Court grant this ex parte application and issue an order shortening time to hear the Diamond Application and for such other and further relief as the Court deems just proper.

DATED January 18, 2007.

**LEWIS AND ROCA LLP**

By: /s/ RC (#0006593)

Susan M. Freeman

Rob Charles

*Attorneys for Official Committee of Unsecured  
Creditors for USA Commercial Mortgage  
Company*